IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS Nos. 6481 of 1998 to 6499 of 1998
and
CIVIL APPLICATIONS Nos.10310 of 1998 to 10328 of 1998
in
FIRST APPEALS Nos. 6481 of 1998 to 6499 of 1998
and
CROSS OBJECTIONS Nos.229 of 1999 to 236 of 1999
in
FIRST APPEALS Nos.6481 of 1998 to 6488 of 1998
and
CROSS OBJECTIONS Nos.237 of 1999 to 247 of 1999
in
FIRST APPEALS Nos.6489 of 1999 to 6499 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and
MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgement?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

GUJARAT INDUSTRIAL DEVELOPMENT CORP.

Versus

OFFICER ON SPL.DUTY (LAQ)

Appearance:
Mr.S.N.Shelat with Mr.N.V.Anjaria for the appellants and for applicants in the Civil Applications and for Gujarat Industrial Development Corporation, for the Cross Objectors in the Cross Objections.
Mr.Prashant G.Desai, learned Govt.Pleader for the

respondent, Officer on Special Duty in First Appeals Nos.6481 of 1998 to 6489 of 1998 and in Civil Applications Nos.10310 of 1998 to 10318 of 1998, and for cross objectors in Cross Objections Nos.229 of 1999 to 236 of 1999, Mr.K.G.Sheth, learned Asstt.Govt. Pleader for respondent, Officer on Special Duty in First Appeals Nos.6490 of 1998 to 6494 of 1998 and Civil Applications Nos.10319 of 1998 to 10323 of 1998 and for cross objectors in Cross Objections Nos.238 of 1999 to 242 of 1999, and Mr.P.B.Bhatt, learned Asstt.Govt. Pleader for respondent, Officer on Special Duty in First Appeals Nos.6495 of 1998 to 6499 of 1998 and in Civil Applications Nos.10324 of 1998 to 10328 of 1998 and for cross objectors in Cross Objections Nos.243 of 1999 to 247 of 1999.
Mr.Mukesh R. Shah for respondents-claimants in First Appeals Nos.6481 of 1998 to 6488 of 1998, Civil Applications Nos.10310 of 1998 to 10317 of 1998 and Cross Objections Nos.229 of 1999 to 236 of 1999.
Mr Jitendra M.Patel and Mr.J.N.Patel for respondents - claimants in First Appeals Nos.6489 of 1998 to 6499 of 1998 and Civil Applications Nos.10318 of 1998 to 10328 of 1998 and for cross objectors in Cross Objections Nos.237 of 1999 to 247 1999.

CORAM : MR.JUSTICE M.R.CALLA and
MR.JUSTICE R.P.DHOLAKIA
Date of decision: 22/04/99

COMMON ORAL JUDGEMENT (per M.R. Calla, J.)

Whereas all these 19 First Appeals and the Civil Applications filed in each of these appeals as also the Cross Objections filed in each of these appeals arise out of a common judgment and order passed by the Reference Court, as a common judgment and order dated 31st January 1998 in Land Reference Cases Nos.74 of 1990 to 92 of 1990, the main Land Reference being Case No.89 of 1990 decided by the Assistant Judge, Surat, we propose to decide all these 19 First Appeals, 19 Civil Applications moved thereon and the 19 Cross Objections filed thereon, by this common judgment and order.

2. The lands concerned in these cases are situated in village Sachin of Taluka Choriyasi, District Surat. These lands were sought to be acquired by the Government of Gujarat under the Land Acquisition Act, for the purpose of construction of industrial housing colony and housing society for the purpose of Gujarat Industrial

Development Corporation, which will be hereinafter referred to as 'GIDC'. The notifications under Section 4 of the Land Acquisition Act dated 12th April 1982 were published on 1.7.1982. Thereafter the notices were issued under Section 6 of the Act on 29th May 1985 and thereafter notices under Section 9 were issued on 3.2.1986. The claimants appeared before the Land Acquisition Officer and the Land Acquisition Officer after hearing the claimants, fixed the compensation to be given to the claimants in respect of the lands at the rate of Rs.2.50 per sq.mtr., by his award dated 15th October 1987 as against the rate of Rs.25/- per sq.mtr. claimed by the claimants.

3. Aggrieved from this award dated 15th October 1987, fixing the rate of compensation at Rs.2.50 per sq.mtr. for granting compensation, the claimants sought references under Section 18 before the District Court, and accordingly the references were sent by the Collector to the District Court, Surat. These references were sent to the Assistant Judge, Surat, for adjudication. The State Government as well as the GIDC appeared before the reference Court in response to the notice of reference Court proceedings and they contested the claim of the land owners. The reference Court decided these land Reference Cases Nos.74 of 1990 to 92 of 1990, the main land Reference being Case No.89 of 1990, by the order dated 31st January 1998 fixing the rate of compensation to be Rs.20/- per sq.mtr. instead of Rs.2.50 per sq.mtr. as awarded by the Land Acquisition Officer with the other allied reliefs as mentioned in the impugned order itself. It was also ordered by the reference Court that, in case of new tenure land, 5% of the amount of the award shall be deducted. The GIDC as well as the claimants have felt aggrieved against this order dated 31st January 1998 and that has given rise to the First Appeals Nos.6481 of 1998 to 6499 of 1998 on behalf of the GIDC and Cross Objections Nos.229 of 1999 to 247 of 1999 by the claimants.

3. We have heard learned Counsel for both the sides and have also gone through the impugned order dated 31st January 1998 passed by the reference Court, as also the previous award Exh.14 about which the reference is made in the impugned order. We find that the claimants in these cases have examined Kiritbhai Natvarbhai Shah, at Exh.13 who is the claimant in land Reference Case No.87 of 1990. This is the only witness who has been examined. No witness has been examined on behalf of the appellants and both the parties have produced some documents and the previous judgment given by the Joint District Judge,

Surat, i.e. Exh.14, appears to be the previous order dated 31st July 1991 in land Reference Cases Nos.148 of 1986 to 173 of 1986, the main land Reference being Case No.171 of 1986 has been relied upon. In the case of previous order Exh.14, the lands were acquired for the purpose of Gujarat Housing Board for construction of houses. The lands in those cases were situated in the sim of village Kansad, situated in Choriyasi Taluka, District Surat. Though the lands were situated in the sim of village Kansad, they were near the village Sachin and were situated at a distance of about 15 kms. from Surat city. The lands of Kansad which were subject matter of acquisition under the previous order Exh.14 were situated on the side of the highway from Surat to Navsari. In case of previous order Exh.14, the reference Court fixed the rate of compensation at Rs.25 per sq.mtr. In the present cases, it was argued that the lands concerned in these cases are comparable to the lands which were acquired in case of Exh.14 pertaining to village Kansad, nay, they are better in comparison with the lands of Kansad, and therefore, the rate of compensation should have been fixed at least at Rs.25/per sq.mtr. However, the impugned order dated 31st January 1998 has been assailed on behalf of the appellants GIDC on the ground that even the rate of Rs.20/- per sq.mtr. at which the compensation has been granted by the reference Court is excessive and harsh looking to the location of the said lands and it cannot be said that these lands are comparable with the lands which were concerned in the cases of previous order Exh.14. It was also pointed out by Mr.Shelat that earlier the reference Court had decided a group of 154 land Reference Cases treating the land Reference Case No.84 of 1989 as the main reference case about which the reference Court has made a mention in para 11 of the impugned order dated 31st January 1998. It was submitted by Mr.Shelat that in those cases, the reference Court had fixed the compensation at the rate of Rs.20/-, the land was situated at Kawas, the land was acquired for the purpose of GIDC and the reference Court had observed that the previous judgment of the Assistant Judge, Surat, in Land Acquisition Case No.88 of 1991, the rate of compensation was enhanced from Rs.5/- to Rs.25/- and against this decision, appeal was filed in the High Court, the High Court had enhanced the rate of compensation from Rs.25/per sq.mtr. to Rs.33/- per sq.mtr. but the Government and the acquiring body preferred Second Appeal before the Honourable Supreme Court; the Supreme Court had delivered the judgment on 23rd August 1996, reducing the amount of compensation at the rate of Rs.22/- per sq.mtr. deducting the amount towards the development

charges. We find that the reference Court while passing the impugned order has taken note of these facts in para 11 of the impugned order itself and after considering the principles on which the matter was decided and taking note of the date of notification as well as the distance of the land in question from Kawas village and the principle of 10% per annum increase or decrease, it has fixed the rate of compensation at Rs.20/- per sq.mtr. Mr.Shelat produced a copy of the Supreme Court's order dated 23rd August 1996 in the case of GIDC v. Narottambhai and has submitted that the reference Court, in the instant case, has erroneously noticed the date of notification under Section 4 to be 4.6.1986 in case of the land reference with regard to village Kawas, whereas in fact the date of notification under Section 4 was 10th April 1989 and therefore, the deduction of 10% for a period of four years only was absolutely erroneous and if at all such deduction had to be made, it ought to have been made for a period of seven years instead of four years keeping in view the date of notification in the earlier case to be 10th April 1989 and the date of notification in the present case being 12th April 1982. We have gone through the orders which have been passed in land Reference Cases with regard to village Kawas and the orders passed in the further proceedings before the High Court and the Supreme Court and we find that the lands which have been acquired in the present cases cannot be said to be comparable with those concerned in the group of 154 land Reference Cases relating to village Kawas and therefore, the basis of the reference Court relating to the orders passed in the case of lands which were acquired from village Kawas cannot be said to be the correct basis on the basis of which the rate of compensation could be fixed in these cases and therefore, for the purpose of deciding the rate of compensation in the cases at hand, the aid could not be sought from the orders which have been passed while acquiring the lands of village Kawas in the group of 154 land Reference cases treating the main land Reference to be Case No.84 of 1989.

4. In our considered opinion, the lands which were concerned in the cases of previous order Exh.14 are comparable to a higher degree vis-a-vis, the lands of Kawas and therefore, the present impugned order passed by the reference Court has to be examined on the basis as to whether the lands acquired in the present cases are exactly identical or comparable to the lands of village Kansad concerned in Exh.14. There is no doubt that the lands of Kansad which were acquired as concerned in Exh.14 were near to village Sachin - the lands of which,

have been acquired in the present cases and both are comparable, but there is a distinguishing feature inasmuch as the witness who was examined at Exh.13 on behalf of the claimants has himself stated that the lands of village Sachin which have been acquired are 1-1/2 km. away from Navsari - Surat highway. In this view of the matter, the lands which are near the highway may be valued in a given case at higher rate than the lands which are about 1-1/2 km. away from the State highway. In this view of the matter, we find that while it is a fact that in cases of the lands of village Kansad, the rate of compensation was fixed at Rs.25/- per sq.mtr., and in the present cases, it has been fixed at Rs.20/per sq.mtr. and for this short of Rs.5/- in the rate of compensation, there appears to be a reasonable and plausible justification, as the acquired lands are away from the State highway in comparison to the lands located in the village Kansad. The previous award Exh.14 could certainly be used as a relevant order for the purpose of taking guidance for deciding the claims of the present claimants in the instant cases and we do not agree with the contention of the learned Counsel for the appellants that the lands concerned in the present cases were comparable with that of Kawas as were concerned in the earlier group of 154 land Reference cases and hence, we find that the rate at which the reference Court has granted compensation, i.e. Rs.20/- per sq.mtr. in the present cases is just and reasonable, it cannot be said to be excessive or disproportionate. In this view of the matter, we do not find any basis to hold that the compensation which has been granted by the reference Court at the rate of Rs.20/- per sq.mtr. warrants interference at the instance of the appellants and, therefore, these appeals fail and the same are required to be dismissed.

5. So far as the Cross Objections are concerned through which the claimants are claiming that the rate of compensation should be enhanced to Rs.25/- per sq.mtr. apart from the reasons which we have given in the earlier part of this order holding that the rate of Rs.20/- per sq.mtr. at which the compensation has been granted is neither excessive nor disproportionate and notwithstanding this finding to which we have already arrived, the learned Counsel for the claimants submitted that the mere fact that a particular land is situated near the highway or is away from the highway cannot be decisive with regard to the value of that land. In a given case, the land situated near the highway may be less valuable and less developed in comparison to a land which may not be situated near the highway but is away

from the highway. In support of this contention on behalf of the claimants, the Supreme Court decision in the case of State of Bihar v. Madheshwar Prasad, reported in (1996) 6 SCC 197 has been cited. We have gone through the said decision and the contents of para 5 of this judgment in particular on which the pointed reference was made by Mr.Jitendra Patel. However, it is not discernible as to what was the factual position with regard to the development of the land concerned in the case before the Supreme Court. All that has been observed by the Supreme Court is that, the lands are situated very near to the National Highway, but 4 kms. away from Jamshedpur city and under these circumstances, taking into consideration the facts and circumstances, the Supreme Court took the view that the reasonable compensation would be Rs.22,000/- per Acre and the compensation was reduced from Rs.45,000/- per Acre to Rs.22,000/- per Acre. We fail to understand that even if the proposition which has been canvased that in a given case, the lands even if is away from highway can be more developed in comparison with the lands near the highway is accepted, how it can be taken as a rule of universal application that in all the cases the lands which are away from the highway will be more developed and particularly in the facts of the present cases, we do not find that it has been brought out through any evidence that the lands of village Kansad which were near the highway are less developed than the lands which are acquired from village Sachin in the sim of village Sachin in the instant cases which are said to be 1-1/2 km. from the highway. The aforesaid Supreme Court decision, therefore, does not afford any aid to the cross objectors on this aspect of the matter and it is very clear that the said case has been decided on the basis of the facts and circumstances which were available and which were noticed by the Supreme Court.

6. The learned Counsel in the Cross Objections has also submitted that in the case of the lands of village Kansad, the notification had been issued in the year 1981 whereas the notifications in the present cases have been issued in the year 1982 and, therefore, on the authority of the Division Bench decision in the case of Special Land Acquisition Officer, Bharuch v. Motibhai Mohanbhai, reported in 1997 (2) GLH 773, the 10% increase over and above the rate at which the compensation was granted in the case of village Kansad should have been given to the present claimants. The question of 10% increase as such could arise only when we would have accepted that the claimants in the present cases were entitled to Rs.25/- per sq.mtr. as was done in the case of lands of village

Kansad. Whereas we have already come to a finding that the lands are comparable to certain extent but not are exactly identical and the lands of village Sachin are at a distance of 1-1/2 km. from the highway as compared to the lands of village Kansad, there is no question of applying the requirement of 10% increase. For the reasons aforesaid, we find no substance in the grievance of the cross objectors that they should have been awarded compensation at the rate of Rs.25/- per sq.mtr.

7. On behalf of the claimants cross objectors, the direction which has been given by the reference Court with regard to the tax to be deducted at source, is not pressed and therefore, we need not go into that question. However, it has been submitted that the reference Court has directed the deduction 5% from the amount of the award on the ground that some of the lands are new tenure lands and this part of the impugned order has also been challenged by way of amendment in two of the matters only namely, Cross Objections Nos.237 of 1999 and 242 of 1999. Now the position of law is very clear that even in the cases of new tenure lands, the deduction of 5% from the amount of award is not permissible and therefore, we find that in case of Cross Objections Nos.237 of 1999 and 242 of 1999, no deduction of 5% shall be made from the amount of award on the ground that the lands concerned are new tenure lands.

8. The upshot of the aforesaid discussion is that all these 19 First Appeals Nos.6481 of 1998 to 6499 of 1998 fail and the same are hereby dismissed, with no order as to costs.

9. Cross Objections Nos.229 of 1999 to 247 of 1999 (except Cross Objections Nos.237 of 1999 and 242 of 1999 in First Appeals Nos.6489 of 1998 and 6494 of 1998) have no merit and the same are hereby dismissed. So far as Cross Objections Nos.237 of 1999 and 242 of 1999 are concerned, these Cross Objections are allowed to the extent that the deduction of 5% shall not be made from the amount of award to which the claimants are entitled, even if the lands concerned are new tenure lands and the following part of the order will not disentitle the claimants in these two Cross Objections from any part of the amount under the award:

> "Some of the lands are admittedly of new tenure lands and hence 5% (Five percent) of the amount of award be deducted for these new tenure lands".

This part of the impugned order is set aside with

regard to these two Cross Objections and in both these cases, the impugned order shall stand modified to the extent as above.

10. All these 19 Cross Objections are decided accordingly with no order as to costs.

11. In view of the order passed in the main First Appeals whereby the appeals have been dismissed, no orders are required to be passed in all the 19 Civil Applications with regard to stay in these matters and all these 19 Civil Applications are disposed of accordingly.

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